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CENTRAL INTELLIGENCE AGENCY

16 March 1976

Memorandum For: Mr. Warner
Mr. Cary

Mr. Lams

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Attached is a "rewrite"
of Administration views on S.
Res. 400.

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Administration Views on S. Res. 400

Section 3(a): The Administration does not favor placing jurisdiction over domestic as well as foreign intelligence activities in the new Intelligence Committee. FBI's intelligence activities are inseparable from the Bureau's law enforcement responsibilities. Oversight of law enforcement activity is not appropriate for an intelligence-oriented committee. Such combined jurisdiction is also inadvisable because domestic intelligence involves questions of individual constitutional rights not present in the case of most foreign intelligence activities where Americans are not involved; and foreign intelligence involves serious national security problems not inherent in domestic intelligence activities.

Sections 3(b) and 5(a): Rotating membership for both Committee members and staff may inhibit development of professional competence and thus impede effective oversight.

Section 3(c): S. Res. 400 appears to go far toward achieving concentrated oversight. In removing jurisdiction for intelligence matters from the Senate Armed Services, Government Operations, Foreign Relations, and Judiciary Committees, the resolution seems to establish exclusive jurisdiction for such matters within the new Committee on Intelligence Activities. However, the provisions of Section 7(c)(2) which permit the Committee or any member thereof to disclose any information "relating to the lawful intelligence activities of any department or agency of the United States," to any other Senate Committee or member are not sufficiently restrictive and negate a major advantage of exclusive committee jurisdiction, i. e., reducing the proliferation of sensitive operational information throughout the Congress.

Section 4(b): The requirement of annual, unclassified reports from intelligence agencies appears unwise. It is unlikely to be possible to prepare an annual report of intelligence activities that could be unclassified and remain meaningful and not misleading.

Section 7(a) and (b): Contrary to the Administration's position that Congress should not disclose classified intelligence information provided by the Executive Branch over Presidential objection, the Resolution would allow such disclosures by either the new committee or the full Senate over Presidential objections. This provision raises serious Separation-of-Powers problems and is undesirable. This provision creates practical problems of cooperation between the Executive Branch and Congress with regard to providing information to the Committee without assurance that such information will not be unilaterally disclosed to the public.

Section 7(c-e): The provisions in S. Res. 400 for sanctions against Senators and committee staff members who make unauthorized disclosures of classified information are consistent with the need for both Houses to establish firm rules to safeguard intelligence secrets from unauthorized disclosures. These sanctions will mitigate the potential adverse effect of Section 7(c)(2), which permits the new committee and its members to disclose any information in its possession to other Senate Committees and Members.

Section 10(a) and (b): S. Res. 400 states the "sense of the Senate" that department and agency heads should keep the new committee "fully and currently informed with respect to intelligence activities, including any significant anticipated activities...." Both advanced notification of a proposed activity and the "currently and fully informed" requirement would allow the committee to cross the line dividing oversight from management.

S. Res. 400 also expresses the sense of the Senate that the heads of agencies involved in intelligence activities should furnish "any information" in their control to the new Senate Committee "whenever requested." Inclusion of these provisions could provoke confrontations between the two branches.

As a resolution without the force of law, S. Res. 400 clearly cannot supersede existing statutory requirements, such as that contained in Section 662 of the Foreign Assistance Act, for Executive reports to several Congressional committees on all covert actions. Separate legislation will be necessary to carry out the modification of Section 662 to limit dissemination of such sensitive information.

Section 10(c): In charging the new Committee with assuring that constitutional rights are not violated, the Resolution may conflict with the President's constitutional responsibility to "take care that the laws be faithfully executed." S. Res. 400 requires that all intelligence activities in violation of law or the constitutional rights of any person be reported to the new committee "immediately upon discovery." A determination that a law has been violated requires both factual investigation and legal analysis. If the section anticipates communication with the committee prior to the completion of this process, it risks interference with the proper administration of justice and also with oversight functions in the Executive Branch, including those of the Intelligence Oversight Board.

Section 11: S. Res. 400 goes far beyond effective Congressional oversight of intelligence and grants broad legislative authority to the new committee. This feature is particularly troublesome with regard to the resolution's apparent (but somewhat ambiguous) intent to require annual authorization of appropriations for intelligence activities prior to any Senate consideration of appropriations bills containing funds for intelligence (see Section 11, but compare to Section 12(a)(7)). It is unrealistic to expect that the secrecy of intelligence budgets and programs could be protected under such a prior authorization procedure.

Further, intelligence is contained in more than 30 separate parts of the Defense budget, of which 32 percent is already subject to annual authorization. If an intelligence authorization were to be developed, severe difficulties would be encountered in jurisdictional problems. Section 13 of S. Res. 400 defines intelligence activity in such a manner that tactical foreign military intelligence is not considered "intelligence activity" for this committee's purposes. Such a distinction is virtually impossible to put into effect and may lead to Congressional involvement in the day to day management of intelligence well beyond the policy review needed to oversee intelligence activities adequately.